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# Book Review. Administrative Law: Cases and Materials by Walter Gellhorn and Clark Byse

Ivan C. Rutledge

*Indiana University School of Law - Bloomington*

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**ADMINISTRATIVE LAW: CASES AND COMMENTS.** By Walter Gellhorn and Clark Byse. New York: Foundation Press, 1954. Pp. 1232, \$9.00.

Here is a classroom book that will be found even more useful than its predecessor, *Gellhorn, Administrative Law: Cases and Comments* (2d ed. 1947). The editors have placed increasing emphasis upon administrative procedure at the expense of doctrinal treatment of the separation of powers. The new heading for Chapter II, "Legislative and Executive Control of Administrative Action," reflects the inclusion of a penetrating essay by the editors on the President as administrative head of the federal executive hierarchy. This chapter, in addition to surveying constitutional doctrine, calls attention to the significance of appropriations, the increasing use of investigation and consultation by legislative committees, and procedural controls of the legislature over rules formulated by the agency. Administrative law is less and less conceived as a branch of constitutional law and now appears to be primarily a study of the law of governmental practice and procedure whereby executive officers and agencies receive their powers, exercise them, and are controlled in the exercise of them.

The editors express in the preface their strong preference for taking up judicial control after legislative and executive control instead of leaving it to the chronological position following agency procedure. Hence, in Chapter III it is assumed that the statute has endowed the agency with its powers and that the agency has acted, is acting, or is refusing or threatening to act. The questions then are how to obtain a judicial remedy and how far the court will re-examine the decisions of the agency. Considerable state material is used here as elsewhere, but some teachers may wish to emphasize the problem of fashioning a judicial remedy where none is given by statute in terms of the practice of a particular state. Moreover, the interest attracted by controversy over federal agencies may have unduly distracted the attention of the profession from old-line executive officers, so that students are not getting sufficient explicit introduction to how to get into court, for example, when the action or determination does not have any degree of conclusive effect except to the extent of shifting the burden of initiating litigation.

"The Requirement that Findings Accompany the Final Action" is a subject that it seems should have accompanied the transfer of judicial review to the front of the book. However, it was left in the chapter on the process of agency decision in trial hearings. While the decider is concerned with the requirement as a requirement, and while findings should affect the course of decision, I believe that their aspect as a device of judicial control is more important. So arranged, the requirement of findings could be considered at large without restriction to findings based on a trial hearing.

The expression "trial hearing" helps to distinguish other types of administrative hearings, and the arrangement of the materials in the book lends clarity to this distinction. Two chapters intervene between judicial

control and the formal adjudication procedures. One deals with the collection of information by the agency and the powers of investigation. The other then takes up informal dispositions by negotiation and settlement or advice. Only thereafter comes the study of the right of a regulated party to know the case against him and be heard in opposition to it, followed by examination of procedural incidents analogous to court trials and appeals.

The chapter on "The Informal Administrative Process" is new, by comparison with the predecessor volume. It is valuable, and its significance for students with a background of judicial administration will be enhanced by using comparative material dealing with traditional executive officers like the prosecuting attorney and the health officer.

Although the book is 162 pages longer than its predecessor volume it is characterized by an increase in editorial comment that is incisive, easily read, and should prove to be of great help to the student who is being introduced to the subject. The first chapter of 61 pages, for example, contains no cases, and comprises a collection of readings that should produce substantial economies in classroom time later in the course. The richness of case matter collected makes the work of standard reference quality for the practitioner. But since it is essentially a teaching tool most of the cases are digested and many of the others are heavily edited. The use of digests to such a degree is justified for the advanced students who will be taking the course and the digesting is carefully done for the purpose in view. In addition to excerpts from books, periodicals and governmental reports, the editors have mined from such candid records as transcripts of hearings before Congressional committees and the Congressional Record. It may be that the space devoted to bias of the decision-maker (41 pages), though less than that in the predecessor book, could yet stand some shrinkage. The book is bulky, but there are few places where materials could be sacrificed without mutilation.

It is gratifying to see problems posed that are not merely hypothetical situations calling for a judicial pronouncement. For example, at page 579 a subpoena is reproduced along with the statement of enough facts to generate problems for the application of the following 31 pages of cases and statutes in a context of representation and advocacy.

I look forward with relish to the use of this improved tool, which appears to have all the virtues of its predecessors.

*Ivan C. Rutledge* †

**THE DYNAMICS OF DEMOCRATIC GOVERNMENT.** By John P. Roche and Murray S. Stedman, Jr. New York: McGraw-Hill, 1954. Pp. ix, 418. \$5.00.

This latest volume in the McGraw-Hill Series in Political Science serves many valuable functions. It was designed to provide the beginning student of political science with an over-all comparative picture of the opera-

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† Professor of Law, University of Washington.